IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 211 (M/S) of 2005

Harsh Mani Vyash S/o Sri Kali Ram alies,
@ Bishamber Dutt R/o Vill. Bhat Gaon
Patti Dhanari, Tehsil Dunda,
District Uttarkashi. .....Petitioner

Versus

1. State of Uttaranchal through Collector, Uttarkashi, District Uttarkashi.
2. Commissioner Garhwal Region Pauri, District Pauri Garhwal.
3. Principal, Government Inter College Thati, Patti Dhanari, Tehsil Dundan, District Uttarkashi. .....Respondents

Sri H.M. Raturi, learned counsel for the petitioner,
Learned Standing Counsel for the respondents.

24.04.2006

Hon'ble Rajesh Tandon, J.

Head Sri H.M. Raturi, learned counsel for the petitioner and Learned Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 23.11.1998 passed by the Collector, Uttarkashi as well as the order dated 10.02.2005 passed by the Commissioner, Garhwal region, Pauri in appeal no. 1 of 2005.

Briefly stated according to the case of the petitioner, he is permanent resident of Bhat Gaon, Patti Dhanari, Tehsil Dunda, District Uttarkashi and the lease was granted in his favour on 09.05.1988 by the Collector, Uttarkashi. In pursuance of the grant of the aforesaid lease, the petitioner has constructed the premises known as Chhan-Chowk. On 15.10.2004, it has come to the notice of the petitioner that Principal, Government Inter College, Thati has constructed on the leased land of the petitioner.

The grievance of the petitioner is that the lease which was granted on 09.05.1998 in his favour, has been cancelled by the Collector, Uttarkashi vide order dated 23.11.1988 without issuing notice to the petitioner. Against the said over, he preferred an appeal but the same has also been dismissed by the Commissioner vide order dated 23.11.1998.

In the case of ***Menka Gandhi v. Union of India, (1978) 1 Supreme Court Cases Page 248,*** the Apex Court held as under:-

"It is well established that even where there is not specific provisions in a statute or rules made there under for showing cause against action proposed to be taken against an individual, which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. This principal was laid down by this Court in the State of Orissa v. Dr. (Miss) Binapani Dei in the following words:-

The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its Officers. Duty to act judicially would, therefore arise from the very nature of the function intended to be performed: it need not be shown to be superadded. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance; thereof transcends the significance of a decision in any particular case.

In England, the rule was thus expressed by Byles, J. In Cooper v. Wandsworth Board of Works

The laws of God and man both give the party an opportunity to make his defence, if he has any, I remember to have heard it observed by a very leaned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam" (says God), "where art thou? Hast thou not eaten of the tree whereof I

commanded thee that shouldest not eat?" And the same question was put to Eve also."

In view of the above, the matter is sent back to the Commissioner for deciding a fresh after hearing the petitioner. The Commissioner shall also inspect the said premises before passing the final order. In the meantime both the parties are directed to maintain status quo.

Subject to the aforesaid observation, writ petition is disposed of.

(Rajesh Tandon, J.)

24.04.2006
Jain